

AMENDMENTS TO THE DRAWINGS:

The attached sheets of drawings includes changes to Figures 5, 11, 21, 26-28, 40, 41, 44, 67-71 and 74. These sheets, which include Figures 5-7, 9-14, 21-28, 40-44, 61-75, replace the original sheets including Figures 5-7, 9-14, 21-28, 40-44, 61-75.

In Figure 5, reference number --19-- has been added. In Figure 11, reference number --29-- has been added. In Figure 21, reference number --51-- has been added. In Figure 26, reference number --58-- has been added. In Figures 27 and 28, reference number "61" has been amended to --62-- and reference number --66-- has been added to Figure 28. In Figure 40, reference number --83-- has been added and in Figure 41, reference number "83" has been amended to --86--. In Figure 44, reference numbers --97-- and --98-- have been added. In Figure 66, reference number "112" has been amended to --114--. In Figures 67, 68, 70, 71 and 74, reference number "38" has been amended to --118--. In Figure 69, reference number --124-- has been added.

Attachment: Replacement Sheets

REMARKS

The Applicant thanks the Examiner for the thorough review and consideration of the pending application. The Office Action dated December 16, 2008 has been received and its contents carefully reviewed.

Declaration

The Office Action alleges that the declaration filed July 25, 2005 is defective because it did not reflect that the application had been amended at the time of execution. See *Office Action, page 2*. It appears that the Office Action is alleging that the declaration, as filed on July 25, 2005, does not properly identify the specification to which it is directed because the declaration does not identify this application by application number and filing date, as required under 37 CFR 1.63.

The Applicant respectfully disagrees. When the declaration is filed after the filing date, the following information will be acceptable as complying with the identification requirement (See *M.P.E.P. 602VI*): (A) application number; (B) serial number and filing date; (C) attorney docket number which was on the specification as filed ... and (E) title of the invention which was on the specification as filed and accompanied by a cover letter accurately identifying the application for which it was intended.

The Applicant submits that the July 25, 2005 declaration properly includes these elements and thus should be considered proper. Nonetheless, a new declaration is attached.

Specification

The Office Action objects to the specification for the informalities noted therein. *See Office Action, page 4.* The specification has been amended to correct the informalities, as suggested. Accordingly, the Applicant respectfully requests that the objection to the specification be withdrawn.

The Office Action further objects to the specification for allegedly failing to provide proper antecedent basis for the "home bath" set forth in claim 19. The Applicant respectfully disagrees.

The specification as filed includes proper antecedent basis for this feature. *See, for example, page 2, line 28.* Accordingly, the Applicant respectfully requests that this objection to the specification be withdrawn.

Drawings

The Office Action objects to the drawings for the reasons set forth therein. *See Office Action, pages 2-3.*

Figures 5, 11, 21, 26-28, 40, 41, 44, 67-71 and 74 have been amended, as set forth above.

With regard to the objection that reference numeral 6 denotes different structures in Figs. 1, 2, 4 and 9-12, the Applicant respectfully disagrees.

The Applicant submits that reference numeral 6 is relied upon to identify supporting means for a pedaling assembly. The structure of the supporting means may be illustrated as having a different shape in the figures, however a different shape does not equate to different structural elements requiring different reference numbers. Therefore, reference numeral 6 does not denote different structures, but is relied upon to designate the element of "supporting means" in Figs. 1, 2, 4 and 9-12.

With regard to the objection that reference numeral 8 denotes different structures in Figs. 3 and 18, the Applicant respectfully disagrees.

The Applicant submits that reference numeral 8 is relied upon to identify a pedaling apparatus. The structure of the pedaling apparatus may be illustrated as having a different shape in the figures, however a different shape does not equate to different structural elements requiring different reference numbers. Therefore, reference numeral 8 does not denote different structures, but is relied upon to designate the element of "pedaling apparatus" in Figs. 3 and 18.

With regard to the allegation that reference numeral 52 should be 51, the Applicant disagrees. Figure 21 has been amended to include reference number --51--.

Accordingly, the Applicant respectfully requests that the objections to the drawings be withdrawn.

Claim Amendments

Claims 19 and 20 are hereby amended and claims 23-27 are newly added. No new matter has been introduced. Support for these amendments may be found, for example, in Figures 18-20 and on page 6, lines 8-28. Claims 1-18 were previously canceled without prejudice or disclaimer and claims 21-22 were previously withdrawn. Accordingly, claims 19-27 are currently pending. Reexamination and reconsideration of the pending claims are respectfully requested.

It is noted that new claims 22-27 are drawn to the previously elected species.

Claim Objections

The Office Action objects to claim 19 for informalities noted therein. See *Office Action*, page 4. Claim 19 has been amended, as suggested. Accordingly, the Applicant respectfully requests that the objection to the claims be withdrawn.

Rejections under 35 U.S.C. §112

The Office Action rejects claim 20 under 35 U.S.C. §112, first paragraph because the specification allegedly does not reasonably provide enablement for the plastic apparatus body being pivotally mounted to the bath lip. See *Office Action*, page 4. The Applicant respectfully disagrees.

The specification reasonably provides enablement for at least this feature. For example, as can be seen in Figures 18-20, when the supporting element is housed in a seat or hole in the

upper lip 44 of the bath 7, the angle at which plastic apparatus body (37) is shown with respect to the intermediate T-shaped supporting element (42) in Figure 20 is different from that illustrated in Figure 19. Nevertheless, for the Examiner's convenience, the specification has been amended to include a written description of this feature previously illustrated in Figures 18-20. No new matter has been added, as evidenced by originally filed Figures 18-20. Accordingly, the Applicant respectfully requests that the rejection of claim 20 under 35 U.S.C. §112, first paragraph be withdrawn.

The Office Action rejects claim 20 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention, as discussed in the Office Action. *See Office Action, page 5.*

The Applicant has amended claims 19 and 20 to clarify the scope of the claimed subject matter. Specifically, "bath seat" as previously claimed in claim 20 has been amended to --said seat-- to reflect the appropriate antecedent basis to "seat" in claim 19. Further, new claim 24 recites that "said supporting means," as recited in claim 19, is "an intermediate T-shaped supporting element."

Accordingly, the Applicant respectfully requests that the 35 U.S.C. § 112, second paragraph rejection of claim 20 be withdrawn.

Rejections under 35 U.S.C. §103

The Office Action rejects claim 19 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,951,447 issued to BUTLER in view of U.S. Patent No. 6,145,140 issued to FERNIE et al. (hereinafter "FERNIE"). The Applicant respectfully traverses this rejection.

The Applicant respectfully submits that neither BUTLER nor FERNIE, singularly or in combination, teach or suggest each and every feature recited in claim 19 and therefore cannot render this claim obvious.

More specifically, claim 19, as amended, recites a home bath which includes, among other features, "said bath (7) is provided with a seat integrally formed in a sidewall of said bath body housing, and said pedaling apparatus (8) is provided with a supporting means (42) which is adapted to be removably housed in said seat."

BUTLER and FERNIE, singularly and in combination, fail to teach or suggest at least these features.

The Office Action relies on BUTLER to teach all claimed elements except for the material of the bath, where lift assembly 100 allegedly teaches the claimed "supporting means." See *Office Action*, page 6. However, BUTLER teaches that exercise device 300 is selectively placed within vessel 20 or outside of vessel 20 by means of lift assembly 100, where lift assembly is separate and apart from vessel 20. See *Figure 7 and column 3, lines 46-47*.

Therefore, BUTLER cannot possibly be considered to teach "said bath (7) is provided with a seat integrally formed in a sidewall of said bath body housing," where "said pedaling apparatus is provided with a supporting means (42) which is adapted to be removably housed in said seat," as recited in claim 19.

Likewise, FERNIE fails to teach or suggest at least this feature. In fact, FERNIE is only relied upon for its purported disclosure of a plastic bath. See *Office Action*, page 6.

Thus, even if one skilled in the art were to contemplate modifying BUTLER in view of FERNIE as suggested, the resulting modification would still fail to teach or suggest each and every feature recited in claim 19.

Therefore, the teaching of BUTLER in view of FERNIE fails to render the claimed invention obvious.

Moreover, the claimed invention is non-obvious over the references because the following advantages and benefits, not contemplated by the references, can be derived, such as avoiding cumbersome, complex and expensive devices, providing a pedaling apparatus which may be easily installed and removed from an existing bath and providing a cheap, light and easily transportable pedaling assembly.

For at least the aforementioned reasons, the Applicant respectfully submits that claim 19 is patentably distinguishable over BUTLER in view of FERNIE. Accordingly, the Applicant

respectfully requests the 35 U.S.C. §103(a) rejection of claim 19 over BUTLER in view of FERNIE be withdrawn.

Likewise, newly added claims 23-28 are patentably distinguishable over the references for at least the aforementioned reasons.

Entry of the above amendments is earnestly solicited. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

This response is believed to be fully responsive and to put the case in condition for allowance. An early and favorable action on the merits is earnestly requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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APPENDIX:

The Appendix includes the following item(s):

- ☐ - a terminal disclaimer
- ☐ - a 37 CFR 1.132 Declaration
- ☐ - a new or amended Abstract of the Disclosure
- ☒ - Replacement Sheets for Figures 5, 11, 21, 26-28, 40, 41, 44, 67-71 and 74 of the drawings
- ☐ - a Substitute Specification and a marked-up copy of the originally-filed specification
- ☐ - a verified English translation of foreign priority document
- ☒ - Declaration

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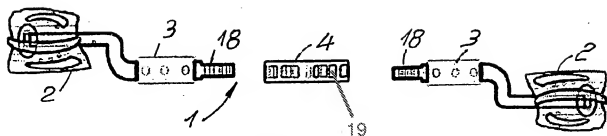


Fig. 5

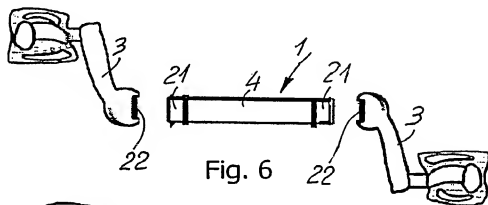


Fig. 6

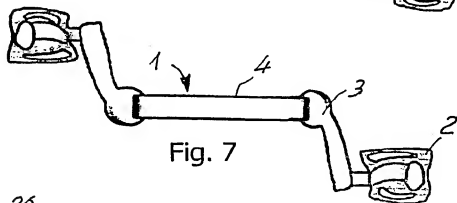


Fig. 7

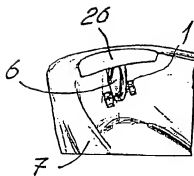


Fig. 9

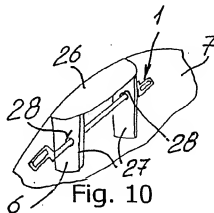


Fig. 10

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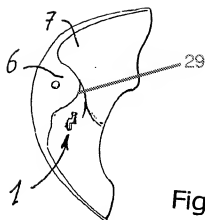


Fig. 11

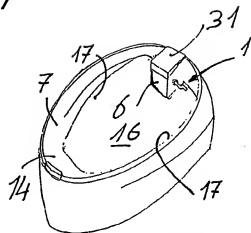


Fig. 12

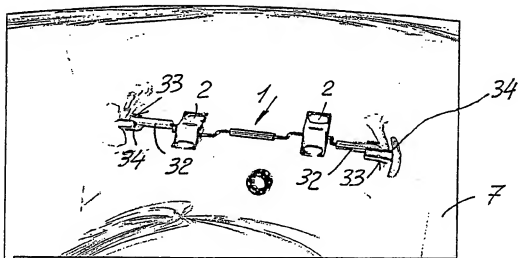


Fig. 13

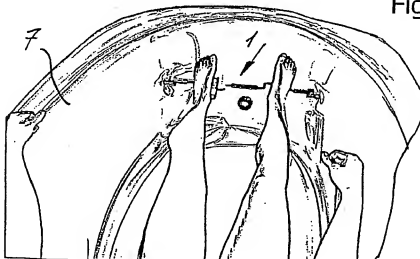


Fig. 14

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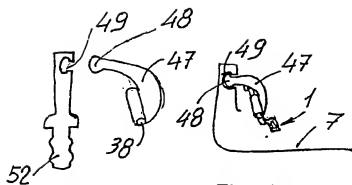


Fig. 21

Fig. 22

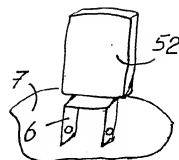


Fig. 23

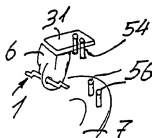


Fig. 24

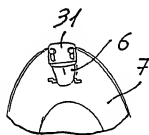


Fig. 25

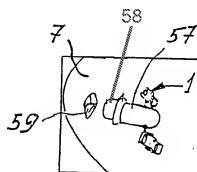


Fig. 26

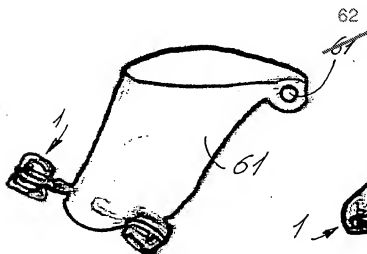


Fig. 27

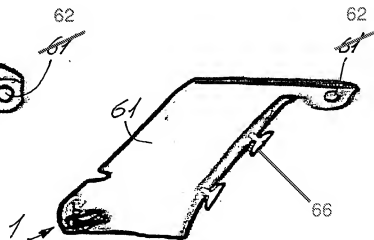


Fig. 28

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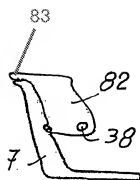


Fig. 40

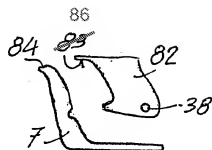


Fig. 41

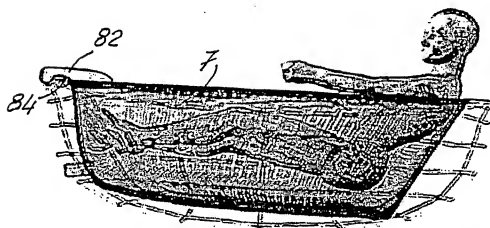


Fig. 42

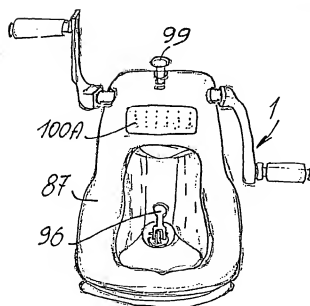


Fig. 43

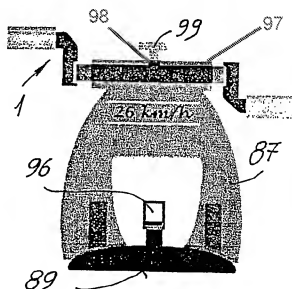


Fig. 44

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Fig. 61

Fig. 62



Fig. 63

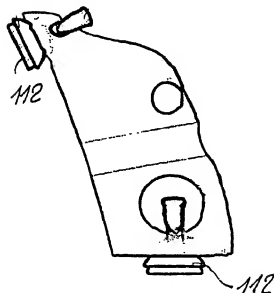


Fig. 64

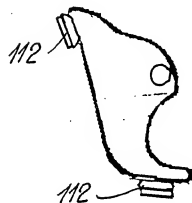


Fig. 65

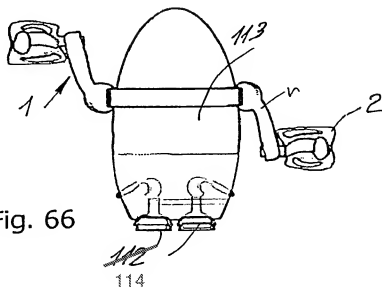


Fig. 66

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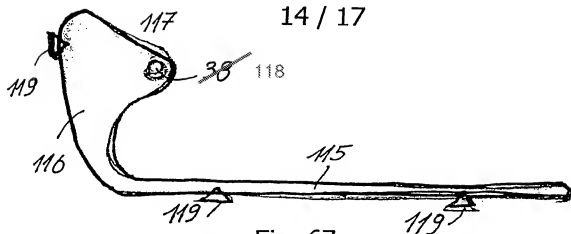


Fig. 67

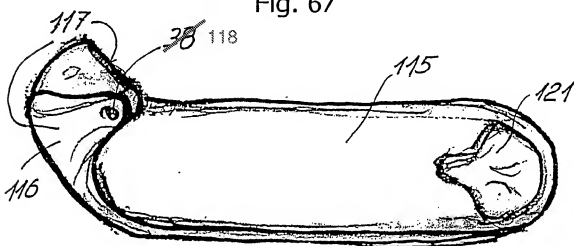


Fig. 68

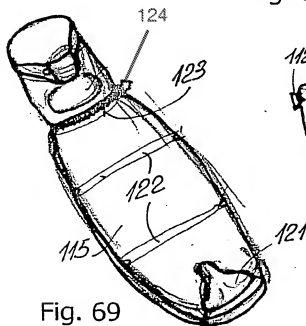


Fig. 69

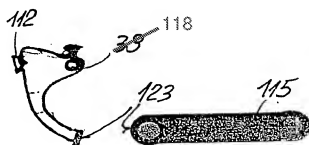


Fig. 70

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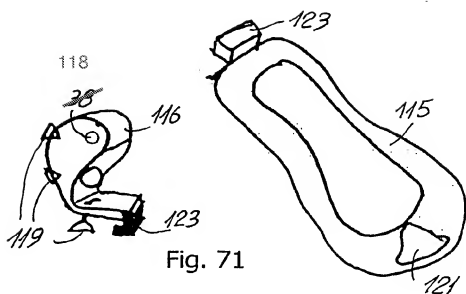


Fig. 71

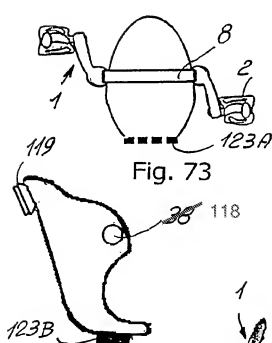


Fig. 72

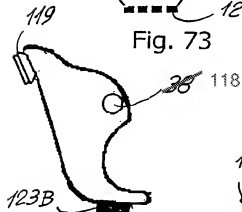


Fig. 74

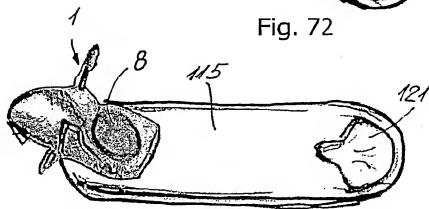


Fig. 75